

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ROGER REEVES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 1:07-CV-616-MHT-SRW
DSI SECURITY SERVICES,)	
AMERICAN BUILDINGS, INC., and)	
EEOC,)	
Defendants.)	

DEFENDANT AMERICAN BUILDING COMPANY'S
REPLY BRIEF IN SUPPORT OF PRE-ANSWER
MOTION TO DISMISS TITLE VII CLAIM

COMES NOW Defendant American Buildings Company ("American Buildings"), misnamed as American Buildings, Inc. in the Complaint, pursuant to Fed. R. Civ. P. 12(b)(6), and files this Reply Brief to Plaintiff's Response to its Motion to Dismiss Plaintiff's Title VII claim against the company.¹

Plaintiff's Response initially claims that the EEOC "did not aggressively pursue my complaint with American Buildings." Plaintiff's Response, p. 1. But Plaintiff's EEOC Charge was drafted by Plaintiff and signed by him, and nowhere

¹ Plaintiff's Response to American Building's Motion is entitled "Motion Not to Dismiss Plaintiff's Claim and Give Summary Judgment", but given that it addresses American Buildings' Motion to Dismiss, the company construes it as a response to that Motion.

mentions American Buildings. *See* EEOC charge, attached to Plaintiff's Complaint. Plaintiff's Charge also states that Defendant DSI is his employer. *Id.*

In addition, Plaintiff's Response never addresses the four factors laid out in *Virgo v. Riviera Beach Assocs.*, 30 F.3d 1350, 1358 (11th Cir. 1994), for use in determining whether a plaintiff may sue a defendant not named in an EEOC charge. *See* American Buildings' Memorandum in Support of Motion to Dismiss, pp. 3-6. Those points thus stand unrebutted.

Finally, Plaintiff's Response claims he was subjected to a hostile working environment in some form or fashion. *See* Response, pp. 3-4. This claim was not raised or even hinted at in Plaintiff's EEOC charge, which solely concerns allegedly discriminatory pay practices, and thus cannot now be raised in this case. *See, e.g., Gregory v. Ga. Dep't of Human Res.*, 355 F.3d 1277, 1279 (11th Cir. 2004) (per curiam).

For the stated reasons, Plaintiff's Title VII claim against American Buildings should be dismissed with prejudice under Fed.R.Civ.P. 12(b)(6), and the company should be dismissed from this case.

Respectfully submitted this 4th day of October, 2007.

/s/ Chris Enloe
Christopher S. Enloe
(ENL001)
Attorneys for American Buildings Company

NELSON MULLINS RILEY & SCARBOROUGH LLP
999 Peachtree Street, NE / 14th Floor
Atlanta, GA 30309-3964
(404) 817-6000 Telephone
(404) 817-6050 Facsimile

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ROGER REEVES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	NO. 1:07-CV-616-MHT-SRW
DSI SECURITY SERVICES,)	
AMERICAN BUILDINGS, INC., and)	
EEOC,)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system and that a copy will be delivered via the CM/ECF system upon the following counsel of record:

David T. Wiley
Jackson Lewis LLP
Park Place Tower, Suite 650
2001 Park Place North
Birmingham, AL 35203
wileyd@jacksonlewis.com

Danielle J. Hayot
Equal Employment Opportunity
Commission
1801 L St., NW
Washington, D.C. 20507
danielle.hayot@eeoc.gov

I further certify that a copy was served upon the following via First Class U.S. Mail, postage prepaid:

Mr. Roger Reeves
B-12 Chattahoochee Court
Eufaula, AL 36027

This 4th day of October, 2007.

/s/ Chris Enloe
Chris Enloe